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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,343	06/25/2003	Joanne Mary Holmes	F3311(C)	2624

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EXAMINER	
CHAWLA, JYOTI	
ART UNIT	PAPER NUMBER
1794	
MAIL DATE	DELIVERY MODE
03/19/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/603,343	**Applicant(s)** HOLMES ET AL.	
	Examiner JYOTI CHAWLA	**Art Unit** 1794	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 February 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on *28 February 2008*. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): 112 (second paragraph).
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

/KEITH D. HENDRICKS/
Supervisory Patent Examiner, Art Unit 1794

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's comments filed February 28, 2008 regarding the rejection of claims 1-9 have been considered but are not persuasive. The rejections are maintained for the reasons of record, as set forth in the Final Office Action.

(I) In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., mixture of tea leaves and tea powder) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Further regarding the argument that Carns does not teach the claimed invention, the applicant is referred to the rejections made in the office action dated May 22, 2007 and office action dated November 28, 2007. Claim 1 recites "tea solids derived from tea powders" and not tea powder as alleged by the applicant in remarks, pages 5 and 7. The term used in the remarks, pages 5 and 7, is "mixture of leaf tea and tea powder" which is not the same as "mixture of tea and tea solids derived from tea powder" as recited in the rejected claims.

(II) Applicant's argument that Carns (EP 0910956 A1) does not teach the invention as set forth in the independent claim 1, is not persuasive (Remarks, Pages 3-5). Claim 1 recites "A method for preparing a fabricated leaf tea product comprising the steps of:
(a) mixing leaf tea with tea solids derived from tea powders, to produce a mixture; and (b) simultaneously wetting the mixture to produce the fabricated leaf tea product."
The rejection is based on Carns wherein
oCarns teaches of a tea product containing tea leaves and soluble tea solids (Page 3, paragraphs [0018]-[0021], and [0023]), i.e., a tea product that is fabricated or made by mixing tea leaves and tea solids (i.e., a mixture) as instantly claimed.
o Carns teaches that soluble tea solids or dried tea powders or tea concentrates (i.e., soluble tea solids derived from tea powders) are obtained by subjecting tea extract to further processing as desired (Page 3, paragraphs [0023] and [0024]), as recited in claim 1.
o Carns also teaches making a mixture of tea leaves and soluble tea powder (Page 3, paragraph [0024]) as claimed in 1 (a).
o Carns further teaches coating tea solids on the tea leaves by spraying tea concentrate (i.e., tea solids derived from tea extract) onto tea leaves and drying the leaves, either simultaneously or in separate steps (Page 3, paragraph [0024]), as recited in claim 1(b).
o Furthermore, Carns teaches that any suitable coating apparatus, for example fluidized bed drier can be used (Page 3, paragraph [0024]), as recited in claim 4.
o Carns teaches tea mixture where tea leaves comprise 30-75% of the mixture (Abstract and Page 3, paragraph [0025]), which falls within the applicant's recited range of 10-75% for claim 2.
o Carns also teaches the moisture level of the combined tea product in the range of 3-7% (Page 5, Example 6, paragraph [0043]), which falls in applicant's recited range of 3-8% for claim 3.

Thus, Carns teaches of a mixture of tea leaves and soluble tea solids derived from tea powders and also teaches of coating of tea leaves with tea solids by spraying tea concentrate onto tea leaves and drying simultaneously, i.e., wetting and drying simultaneously as claimed in the independent claim 1. Carns further teaches of fluidized bed drier and the moisture level of the combined tea product as claimed. Furthermore, if tea leaves are (L) soluble tea solids are (S) and water is (W), where the process of making combined tea product involves combining (L+S+W) and drying, combining any two components prior to the addition of the third component in such a way that the drying is done after all three components have been mixed [i.e., {(L+S) +W} or {(S+W) +L} or {(L+W)+S}], would not impart patentable distinction to the claims (See MPEP 2144.04 [R-6] IV). Therefore, the invention as recited in claim 1, is obvious over Carns, absent any clear and convincing evidence and arguments to the contrary.

(III) In response to applicant's argument that no wetting step and no drying step to a mixture are simultaneously required or suggested by the Carns reference (Remarks, Page 5), applicant is referred to Carns page 3 and the details discussed above under response to argument (II).

(IV) Applicant's argument that Carns or '956 reference is merely directed to a te bag for ice tea beverages" (Remarks, page 5-7) has not been found persuasive as the applicant has not claimed a tea product which is what Carns is teaching, regardless of the way the tea product of the prior art is packaged. Since the applicant has not claimed a packaging step, therefore, argument regarding the method of packaging the tea product as taught by Carns is moot.

(V) In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).
Also, in response to applicant's arguments that secondary reference Menzi (US 6056949) does not describe a process where a mixture of tea leaf and tea solids are simultaneously wetted and dried to produce a fabricated leaf tea product (Remarks, page 8), applicant is reminded that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). The secondary reference is relied upon to show the conventionality of using the fluidized bed equipment to drying foods, including tea products. Menzi further teaches the temperature range of fluidized bed which includes applicant's claimed temperature range. Thus Menzi teaches that it was known in the art at the time of the invention to dry tea products using a fluidized bed set in the recited temperature range of the applicant. Thus applicant's invention is obvious over the combination of Carns and Menzi, absent any clear and convincing arguments to the contrary.

Therefore, applicant's remarks have not been found persuasive and the rejections of claims 1-9 are maintained for reasons of record.

Continuation of 13. Other: Amendment to specification correcting the typographical error on page 7, line 9 has been entered.